REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) NO. 374 OF 2005**

% **Date of Decision** : 19th April, 2007.

M/s.Golden Peacock Overseas Ltd. .... Appellant.
Through Mr. R.S. Endlaw, Advocate.

VERSUS

M/s.Ranjit Industries & Ors .... Respondents.
Through Mr. Nakul Dewan and Mr.Abhijeet Sharma, Mr.Vikash Singh, Mr.Pradhuman & Ms.Taruna Singh, Advocates.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J :

1. The present Appeal has been filed by Golden Peacock Overseas Limited (hereinafter referred to as the appellant, for short)

against the Order dated 29th September, 2005 allowing IA No. 7437/2005 filed by M/s.Ranjit Industries and others, (hereinafter referred to as the respondents, for short) holding that no cause of action or part thereof had arisen within the territorial jurisdiction of this Court. The plaint was accordingly directed to be returned to be filed before a Court of competent jurisdiction under the provisions of Order VII, Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short).

2. The appellant had filed a suit for recovery of Rs.20,80,568.53 and for injunction against the respondent. It was stated in the plaint that the appellant had been dealing with the respondent for over 15 years and had trained and taught it's engineers to manufacture internationally acceptable products. It was further stated that the respondent had agreed and given an undertaking that they shall not deal with the overseas buyers of the appellant directly and shall not do any business for two years after termination of business between them. It was stated that the respondent had violated/breached their undertaking.

3. Learned counsel for the appellant had drawn our attention and relied upon paragraphs 7, 11 and 12 of the plaint. For the sake of convenience, these paragraphs are reproduced below:-

> "7. That the Plaintiff has learnt in the beginning of the month of October, 2003 that the Defendants have in violation of their Undertaking contained in their letter dated 02 April, 2003 to the Plaintiff dealt and supplied goods to M/s. D.W. Bendler, GMBH & Company, Germany, foreign buyer of the Plaintiff for the last over ten years, the same goods as the Plaintiff had been sourcing from the Defendants, for supplying to the said foreign buyer of the value of Rs.6,21,841.15p in or about the month of August, 2003 and of the value of Rs.1,79,098.40p in April, 2003.
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> 11. That the cause of action for the present suit accrued to the Plaintiff against the Defendants in the beginning of the month of October, 2003 when the Plaintiff first learnt of the exports affected by the Defendants to the overseas buyer of the Plaintiff in the months of April and September, 2003. No part of the relief claimed in the Plaint is barred by time.
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> 12. That the registered office of the Plaintiff is situated at Delhi. The defendants had given the Undertaking not to deal with the foreign buyers of the Plaintiff at Delhi and had agreed to the jurisdiction of the Courts at Delhi in the matter of any such claims by the Plaintiff against the Defendants, and this Hon'ble Court has territorial

jurisdiction over the subject matter of the Suit."

4. It is well settled that for deciding and adjudicating the question whether a Court has territorial jurisdiction to decide a suit, the averments made in the plaint alone have to be read as if they are true and correct. The factual accuracy of the averments is decided after trial.

5. Learned counsel also relied upon the letter dated 2nd April, 2003 written by the respondent based in Jamnagar to M/s.Golden Peacock Overseas Limited, Noida. This letter is disputed and denied by the respondents. It is claimed that this is a forged document. Learned counsel for the appellant, however, relied upon the following paragraph in the alleged letter dated 2nd April, 2003 :-

> "All our dealings with you have been with your Registered Office at Delhi and you have, only for our facility, appointed your representatives at our factory premises. Since we have given this Undertaking to you at Delhi and the Agreement aforesaid has been arrived at with you at Delhi, inspite of a Clause in this regard being contained in your Purchase Order, we reiterate that you will be entitled to institute all proceedings against us for recovery/ adjustment of the aforesaid amounts in the course (sic) at Delhi and

> we shall not contest the jurisdiction of the Course (sic) at Delhi."

6. The statements made in the above paragraph of the alleged letter dated 2nd April, 2003 have not been mentioned in the plaint. Learned counsel for the appellant, therefore, cannot rely upon the alleged facts and statements made in the alleged letter dated 2nd April, 2003.

7. It may also be mentioned here that the alleged letter dated 2nd April, 2003 is addressed to the appellant at its Noida address. It is not addressed to the appellant-plaintiff at its Delhi address. However, in paragraph 12 of the plaint as quoted above, the appellant-plaintiff has stated that the respondent-defendant had given an undertaking not to deal with the foreign buyers of the appellant-plaintiff at Delhi and had agreed to the jurisdiction of the Courts in Delhi. Keeping in view the well settled principle of law that factual averments made in the plaint at this stage have to be accepted as correct, we proceed to decide and adjudicate whether the Courts in Delhi have territorial jurisdiction to entertain the suit and decide the same.

8. Section 20(c) of the Code states that every suit can be instituted in a

Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. The question, therefore, required to be answered is whether any cause of action, wholly or partly has arisen in Delhi in view of the averments made in the plaint that the respondent-defendant had given an undertaking at Delhi not to deal with the foreign buyers of the appellant-plaintiff. If giving an undertaking is an integral part of the cause of action for filing of the suit as per the averments made in the plaint, at this stage Courts in Delhi will have territorial jurisdiction.

9. The term "cause of action" is a compendious expression which means every fact which is necessary for a plaintiff to prove/succeed in the reliefs prayed for and support his right to get a judgment. "Cause of action" means whole of the material facts necessary for the plaintiff to allege and prove to get a judgment in his favour. The material facts or rather the bundle of facts which give a right to the plaintiff to redress a legal injury in a Court of law and obtain judgment in his favour constitutes "cause of action". However, the term "cause of action" can be given a wide/broad or a narrow meaning. In the case of ***Union of India versus Adnani Exports Limited*** reported in AIR 2002 SC 126 the Supreme Court held that facts

pleaded and which have nexus and relevance to the lis i.e. the dispute involved in the case, constitute “cause of action” and in a given case when a part or whole of the cause of action arises within a Court's territorial jurisdiction the said Court would have jurisdiction to entertain the Suit. The legislature in its wisdom has given territorial jurisdiction to Courts where the cause of action arises or even a part thereof arises. Accrual of part of the cause of action is sufficient. It is not necessary that the whole of the cause of action should arise within the territorial jurisdiction of the Court.

10. In view of the law as applicable, we will now examine the averments made in the plaint for the purpose of deciding the present Appeal. While deciding the question, we have to also keep in mind the principle that meaningful and not formal reading of the plaint is required. Further, as per Order VI Rule 2 of the Code, material facts have to be stated and not evidence. Reading of the plaint shows that the appellant-plaintiff is an exporter. It is claimed that the appellant has been in the export trade for 15 years and it is a recognised export house. It is claimed that the appellant has a turnover of over Rs.20 crores. It is further claimed that the appellant has been sourcing raw materials and components from the

respondent-defendants for a long time. It is further claimed in para 4 of the plaint that the appellant had obtained an undertaking from the respondent-defendant that they shall not misuse information or particulars of its overseas buyers and shall not directly deal with them during the subsistence of contract and for a period of two years after ceasing of the business with the appellant. It is further claimed that the respondent had agreed to pay damages equal to 60% of the value of the exports done by the respondent-defendants, for breach of the said undertaking. It is further claimed that an undertaking was given in the letter dated 2nd April, 2003. The appellant-plaintiff has stated that in breach of the said undertaking, the respondents had supplied goods to a German buyer in the months of April, 2003 and August, 2003. The name of the said buyer is also mentioned along with the amount of the exports made by the respondent-defendants.

11. From the reading of the plaint, it is apparent that the cause of action for filing of the Suit is the violation/breach of the alleged undertaking given by the respondent-defendants to the appellant-plaintiff. It is this breach of the undertaking which forms part of the “cause of action”. For the purpose of deciding an application under Order VII Rule 11 of the

Code before recording of the evidence, the averments made in the plaint have to be accepted and presumed as correct. Therefore, at this stage we have to proceed on the basis that the alleged undertaking was given by the respondent-defendants in Delhi. If this is the position, then it is difficult to hold, atleast at this stage, without the parties having led evidence that no part of the cause of action has arisen in Delhi. Undertaking has nexus with the facts pleaded, which constitute "cause of action" and the lis, on the basis of which relief is claimed in the plaint.

12. We agree with the learned counsel for the respondent-defendants that it is not open to the parties by a contract to confer jurisdiction on a Court which does not possess jurisdiction to decide a dispute under the Code. But it is equally well settled that where two or more Courts have jurisdiction to try a suit or proceedings, parties by an agreement can stipulate that suit/proceedings shall be instituted and decided by courts located at one place. (Refer ***Hakam Singh versus Gammon (India) Ltd.*** reported in (1971) 1 SCC 286) However, in view of the legal position that a suit can be filed within the territorial jurisdiction of a Court where a part of cause of action has arisen and in view of the averments made in the plaint

that the respondent-defendants had allegedly given an undertaking in Delhi, it cannot be said at this stage that no part of the cause of action has arisen in Delhi.

13. The judgments relied upon by the learned Single Judge duly support the view we have taken. In ***Oil and Natural Gas Commission versus Utpal Kr. Basu and others*** reported in (1994) 4 SCC 711, the Supreme Court held that proceedings can be initiated in any Court at a place where integral part of cause of action has arisen. In the said case the petitioner had initiated proceedings at Calcutta because he had read advertisements inviting tenders at Calcutta though the tender was submitted in New Delhi and the decision to award or not to award tender was to be taken at Delhi. The work was required to be carried out in Gujarat. In these circumstances it was held that no part of cause of action had arisen in Calcutta. It was observed

> "Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be

> answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

14. Similarly, in ***Rajasthan High Court Advocates' Association versus Union of India and others*** reported in AIR 2001 SC 416 the Supreme Court examined the expression "cause of action" and held that it had acquired a judicially settled meaning as every fact which would be necessary for the plaintiff to prove if traversed, in order to secure right to judgment of the court. The Court observed that in each individual case it will have to be determined as to where the cause of action arises. Learned Single Judge has also referred to two decisions of the Supreme Court ***Union of India versus Adani Exports Ltd*** (supra) and ***Union of India and others versus Oswal Woollen Mills Ltd.*** reported in (1984) 2 SCC 646. In the said cases it has been held that registered office of the plaintiff

alone would not give territorial jurisdiction to the Courts within whose jurisdiction the registered office is situated. Therefore the appellant cannot claim right to sue the respondent at Delhi because it's registered office is in Delhi. However, in the present case the appellant has sued the respondent in Delhi on the basis of alleged undertaking given by the respondent to the appellant at Delhi. It is a breach of the alleged undertaking which constitutes an integral and important part of the cause of action for filing the suit for recovery and damages on the basis of breach of the undertaking. The Supreme Court in the case of ***Adani Exports*** (supra) has reiterated the above principles in the following words :-

> "17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts

> pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

15. Another judgment relied upon by the learned Single Judge is ***New Moga Transport Company thr. Its proprietor Krishanlal Jhanwar versus United India Insurance Co, Ltd and others*** (2004) 4 SCC 677, wherein the Supreme Court has reiterated the long standing principle that an agreement between the parties that the dispute between them shall be tried by a competent court having jurisdiction is valid and binding, but parties cannot by an agreement confer jurisdiction on a court which otherwise does not have territorial jurisdiction to deal with the matter. ***Patel Roadways Ltd versus Prasad Trading Company*** (1991) 4 SCC 270 deals with Section 20(a) of the Code and the Explanation. It has been held that where a defendant company has principal office and subordinate office at different places but the cause of action has arisen at the subordinate office, then the Courts having jurisdiction over the subordinate office are competent to try the dispute and not the courts where the principal office of

the defendant is situated.

16. It is however clarified that the observations made in this Order are on the basis of the averments made in the plaint and for the purpose of deciding the application under Order VII, Rule 11 of the Code. These observations and findings will not be binding on the learned Single Judge while deciding the issue and disputes relating to territorial jurisdiction on merits after trial.

17. In view of the above we allow the present appeal. The parties shall appear before the learned Single Judge on 30th April, 2007. In the facts and circumstances of the case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

APRIL 19, 2007.
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